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Attorneys for Defendant

*Wright National Flood Insurance Services, LLC*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

IMAGEKEEPER LLC, a Nevada Limited  
Liability Company,

Plaintiff,

v.

WRIGHT NATIONAL FLOOD INSURANCE  
SERVICES, LLC, a Delaware Limited Liability  
Company, EVOKE TECHNOLOGIES  
PRIVATE LIMITED, an Ohio foreign  
corporation,

Defendants.

Civil Action No.: 2:20-cv-01470-GMN-VCF

**WRIGHT FLOOD'S NOTICE OF  
SUPPLEMENTAL AUTHORITY  
RELEVANT TO WRIGHT FLOOD'S  
MOTION TO DISMISS (ECF NO. 75)**

Defendant Wright National Flood Insurance Services, LLC ("Wright Flood"), by and through its counsel, hereby provide notice of supplemental authority relevant to Wright Flood's motion to dismiss (ECF No. 75). On June 3, 2021, the United States Supreme Court issued its opinion in *Van Buren v. United States*, 593 U.S. \_\_\_\_ (2021), which concerns the Computer Fraud and Abuse Act of 1986 ("CFAA").

Count 6 of Plaintiff ImageKeeper LLC's ("ImageKeeper") first amended complaint (ECF No. 67) purports to assert a cause of action under the CFAA. Among other reasons, Wright Flood moved

1 to dismiss ImageKeeper’s because, as explained in Wright Flood’s motion to dismiss, “[i]n the Ninth  
2 Circuit, ‘exceed authorization’ claims brought under the CFAA and the SCA ‘require some showing  
3 that defendants are ‘inside hackers’ who accessed unauthorized information or files.’” (ECF No. 75,  
4 p. 14 [quoting *Ticketmaster* 306 F. Supp. 3d 1176; *United States v. Nosal*, 676 F.3d 854, 863 (9th  
5 Cir. 2012)].) Wright Flood contends that ImageKeeper failed to plead any such “inside hacker”  
6 allegations. And, “[t]he ‘phrase “exceeds authorized access” in the CFAA does not extend to  
7 violations of use restrictions.’” (*Id.* [quoting *Nosal*, 676 F.3d at 863].)

8 *Van Buren* confirms that “exceeds authorized access” under the CFAA requires a showing  
9 that an individual “accesse[d] a computer with authorization but then obtain[ed] information located  
10 in particular areas of the computer—such as files, folders, or databases—that are off limits to him.”  
11

12 DATED: June 18, 2021

DUANE MORRIS LLP

13 By: /s/ Terry W. Ahearn

14 TERRY W. AHEARN (admitted *pro hac vice*)  
15 DOMINICA C. ANDERSON (SBN 2988)  
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16 *Attorneys for Defendant*  
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**PROOF OF SERVICE**

I hereby certify that I am a citizen of the United States. I am over the age of eighteen years and not a party to the within entitled action; my business address is 2475 Hanover Street, Palo Alto, CA 94304.

On June 18, 2021, I served the document described as **WRIGHT FLOOD'S NOTICE OF SUPPLEMENTAL AUTHORITY** on the interested party(ies) in this action:

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☐ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

☐ **BY FEDERAL EXPRESS:** I served said document(s) to be delivered on the same day to a courier or driver authorized by Federal Express to receive documents, in an envelope or package designated by Federal Express.

☒ **BY ELECTRONIC SERVICE:** I served a true copy, with all exhibits, electronically on designated recipients via electronic transmission of said document(s) as provided under Federal Rules of Civil Procedure.

/s/ *Andrew Hanna*

Andrew Hanna

An employee of DUANE MORRIS LLP